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*Counsel for Plaintiff Flextronics International
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST
LITIGATION

THIS DOCUMENT RELATES TO:

FLEXTRONICS INTERNATIONAL USA,
INC.'S INDIVIDUAL ACTION

Case No. 3:14-cv-03264-JD

MDL Case No. 3:17-md-02801-JD

**REQUEST FOR PRETRIAL STATUS
CONFERENCE TO SET TRIAL DATE**

Direct Action Plaintiff Flextronics International USA, Inc. ("Flex"), respectfully requests that the Court set a pretrial status conference, in person or by videoconference, to set a pretrial schedule and a trial date for Flex and the remaining Flex Defendants (AVX, NCC-UCC, and

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3:14-CV-03264-JD; 3:17-MD-02801-JD

1 Matsuo, hereinafter “Defendants”). Flex conferred with Defendants prior to the filing of this
 2 motion. Defendants’ position is set forth below.

3 **Flex’s Position:**

4 Flex originally filed its action on June 5, 2015. On June 22, 2015, Flex’s case was related
 5 to the DPP class action and reassigned to this Court for all further proceedings. Since then, Flex
 6 has diligently pursued its case in this Court alongside the DPP class. On December 14, 2021, DPP
 7 counsel announced that a settlement had been reached with all remaining defendants in the DPP
 8 class action, thus effectively ending the DPP action. Flex now seeks a trial date and the entry of a
 9 pretrial schedule in the Flex action. Certain Flex Defendants have advised Flex that they are
 10 unavailable prior to March 1, 2022. Flex therefore requests that a trial date be set for the soonest
 11 open trial date after March 1, 2022.

12 Defendants do not oppose the request for a status conference. Defendants do, however,
 13 contend that a March trial date is too soon given the significant differences between the Flex case
 14 and the DPP cases. Defendant AVX also argues that Flex and AVX should be required to mediate
 15 and then submit a joint report regarding the mediation before the Court should even set a trial date.

16 Flex does not oppose setting a reasonably near-term trial date after March consistent with
 17 the Court’s schedule, which undoubtedly has been impacted by the changing landscape of the
 18 COVID-19 pandemic. Defendants, however, overstate the remaining pre-trial hurdles. AVX’s
 19 motion for summary judgment as to liability in the DPP class case was denied before the DPP class
 20 trial, 3:14-cv-03264-JD, Dkt. No. 2647, and AVX’s motion to exclude Flex’s expert Dr. Marx was
 21 denied last month. *See* 3:17-md-02801-JD, Dkt. No. 1585. The purported issue AVX identifies as
 22 a summary judgment issue is (at most) a dispute between experts that falls squarely within the
 23 Court’s prior Order that methodological disputes between qualified competing experts should be
 24 resolved by a jury, not the Court.¹ *See* Dkt. No. 1585 at 4.

25
 26 ¹ In any event, AVX’s suggestion that Dr. Snail’s “before and after” analysis somehow impacts the
 27 scope of Dr. Marx’s testimony is makeweight. Dr. Snail’s analysis simply purports to compare
 28 certain cherry-picked prices before and after certain events. Dr. Snail did not conduct a regression
 analysis, did not estimate a “but-for” price, and did not estimate an overcharge. *See* DAP Opp’n to

More broadly, while Defendants are correct that Flex’s trial will not be a “rerun” of the class trial, there is considerable overlap between Flex’s core price-fixing allegations and those of the DPP class. While new evidence will certainly be presented, much of the evidence presented in Flex’s case will necessarily overlap with evidence already presented by the class. Key questions regarding admissibility and relevance have already been decided. And while the FTAIA and causation issues Defendants mention will undoubtedly lead to motion practice over certain jury instructions, most jury question disputes have been resolved as well.

Nor does mediation warrant delay. AVX’s proposal would as a practical matter delay even setting a trial date for over three months. By that time, the prospect of a trial in the spring or even the summer of 2022 almost certainly will have dimmed considerably. Flex and AVX have discussed the potential resolution of this case for over three years, including in the context of in-person meetings between outside and in-house counsel. While Flex does not oppose mediation, Flex does oppose any delay of the trial date to accommodate mediation. Both Flex and AVX know the case well enough by now to mediate and prepare for trial at the same time. And experience suggests that only the imminent threat of an adverse judgment is likely to drive settlement by any of the remaining parties. The COVID-19 pandemic necessarily has delayed this action by over two years. The time to conclude the Flex action is now.

Defendants’ Position:

Defendants do not believe that this case will be ready for trial as soon as 60 days from now, as Flex has suggested. In addition to the obvious hurdles presented by the resurgence in COVID-19 restrictions and the Northern District of California’s recent decision to pause all jury trials until at least January 26, 2022 due to the rapid spread of the omicron variant, the pretrial process for the Flex case will be substantial, as it is not just a “rerun” of the DPP trial. A Flex trial will feature different antitrust injury, causation, and damages issues than did the DPP trial. The Court has also teed up a series of complicated (and important) FTAIA issues for a Flex trial. *See* Second Order re

AVX Motion for Summary Judgment, 3:17-md-02801-JD, Dkt. No. 759. Nothing in Dr. Snail’s work calls into question the reliability or admissibility of any of Dr. Marx’s conclusions.

1 FTAIA (MDL Docket no. 329, Flex Docket no. 2193) at 6-11. This will require months of
2 preparation and motions practice.

3 In addition, summary judgment issues still need to be decided, including the motion filed
4 by AVX on June 14, 2019 (MDL Docket no. 651, Flex Docket no. 2352). This Court has not ruled
5 on that motion; Flex points out that AVX's motion for summary judgment against the DPPs was
6 denied, but the Court stated in that same text-only Order of March 23, 2020 in the DPP docket that
7 AVX's motion against Flex were administratively terminated *in the DPP docket* and "may be
8 renewed for Flextronics, DAPs, and IPPs at a later date." DPP Docket No. 2647. Notable for the
9 purposes of a Flex trial, Flex's expert economist Dr. Marx conceded that she did no work to rebut
10 the before-and-after studies performed by AVX's expert Dr. Snail. *See* AVX's Reply in Support
11 of its Motion for Summary Judgment (MDL Docket no. 853, Flex Docket no. 2423) at 10-13. The
12 extent of testimony that Flex's expert will be allowed to present at trial is a central issue requiring
13 resolution prior to trial. This is particularly true in light of the Court's admonishment prior to the
14 DPP trial that pretrial motions in *limine* should not be used as mini motions for summary judgment;
15 deciding AVX's motion for summary judgment can help to sharpen these issues for pretrial
16 motions.

17 Flex will suffer no prejudice from setting a trial date further out. There is no injunctive
18 relief being sought, and setting a premature trial date will only impose artificial and unnecessary
19 burdens on the parties and the Court.

20 Finally, AVX believes that mediation should be required prior to the setting of a trial
21 date. AVX has proposed to Flex that the parties mediate their dispute with both counsel and
22 business executives present, and those discussions are ongoing. AVX suggests that the Court direct
23 mediation within 60 days, and to have the parties submit a status report to the Court within 75
24 days. Defendants NCC and UCC have previously tried to mediate this matter with Flex, with no
25 success. NCC, UCC, and Matsuo, however, do not oppose the request that the parties be directed
26 to try again to resolve this matter before trial.

1 Dated: January 6, 2022

Respectfully submitted,

2
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4 Charles E. Tompkins

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CERTIFICATE OF SERVICE

In accordance with Rule 5-5 of the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California, I, Charles E. Tompkins, hereby certify under penalty of perjury under the laws of the United States of America that on January 6, 2022, a true copy of the above document was filed through the Court's Case Management/Electronic Case Filing ("CM/ECF") System and served by that System upon all counsel of record registered for the System and deemed to have consented to electronic service in the above-captioned case.

/s/ Charles E. Tompkins

Charles E. Tompkins

*Counsel for Plaintiff Flextronics International
USA, Inc.*